

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
CERTIFIED FARMERS' MARKET ADVISORY COMMITTEE**

Meeting Minutes

July 12, 2004

Sacramento, California

MEMBERS

Scott Beylik
Dennis Peitso
Russell Hall
Steven Erickson
Gene Etheridge
Edith Clark
Jerry Gonce
Harry Brown-Hiegel
Greta Dunlap
Howell Tumlin
Mary Lou Weiss
Scott Hudson
Karol Jo Kappel
Jim Russell
Gail Hayden
Lynn Bagley

ALTERNATES MEMBERS

Pompea Smith
Fred Ellrott
Jane Allen
Mary Hillebrecht
John Silveira

CDFA

Rick Jensen
Janice Price
Susan Shelton

INTERESTED PARTIES

Karen Wetzel Schott, Ventura
County CFMs
Jack Gibson, Cambria CFM
Jane Gibson, Cambria CFM
John Young, Yolo County
Deputy Ag. Commissioner
Allison Clark, UCB
Randii MacNear, Davis CFM
Candace Silva, YS CFM
Dan Silva, Sutter County
Supervisor/ Yuba-Sutter CFM
Dr. Steven Blank
Louise Nelson Dyble, UCB

ITEM 1: ROLL CALL

Jerry Gonce called the meeting to order. Dennis Peitso led the committee in the pledge of allegiance. Janice Price called the roll and a quorum was established.

A. INTRODUCTION OF GUESTS

Introductions were made.

ITEM 2: APPROVAL OF MAY 10, 2004 MEETING MINUTES

The committee requested that the following changes be made to the May 10, 2004 meeting minutes:

- Add Jim Russell as an attending member.
- Add the actual language of CFMAC's proposed amendments of Sections 1392.9(c) and 1392.9(d) to item 4.D.
- Strike the word "shelled" on item 5.A. from the proposed amendment of Section 1392.2(m), definition of non-certifiable ag products.

- Strike "The motion was not voted on at this point." from the motion on item 5.B., amendment to CFMAC Bylaws for subcommittee action. Parties that were present at the May 10, 2004, meeting recalled that the appropriate discussion for the amendment did occur.
- Change all references of "committee bylaw(s)" to "committee procedure(s)".

MOTION: Jim Russell moved to approve the minutes as amended. Dennis Peitso seconded. The motion passed with one abstention.

ITEM 3: APPROVAL OF AGENDA

Jerry Gonce asked that the letter from Jack and Jane Gibson be added to the agenda as item 6.A.

MOTION: Jim Russell moved to approve the agenda as amended. Dennis Peitso seconded. The motion passed unanimously.

ITEM 4: REPORTS

A. CFM REMITTANCE FEE AND DELINQUENT MARKET REPORTS: 2nd, 3rd, 4th QUARTERS, 2003 AND 1st QUARTER, 2004 – JANICE PRICE

Reports included in the committee packet. No discussion at this time.

B. CDFA BUDGET REPORTS: APRIL AND MAY, 2004 – JANICE PRICE

Reports included in the committee packet. No discussion at this time.

C. STATUS OF APPROVED CFMAC PROPOSED REGULATIONS – JANICE PRICE

Janice Price discussed the issues related to the proposed adoption of 1392.9(c) - 1392.9(e). CACASA stated that the word "proximity" is vague and needed to be defined. Janice consulted with the CDFA Legal Office and received the following as recommended changes:

"(c) A certified farmers' market operator or designated agent shall not allow, grant permission, nor charge a fee to an individual or entity for the privilege of offering for sale any agricultural product ~~not grown in California~~¹ where the

¹ Strikethrough = language to delete; Underline = legal office recommendations of language to add

offering is made outside of but in ~~proximity~~ within ???² feet of a certified farmers' market.

(d) A certified farmers' market operator or designated agent shall not allow or grant permission to sell or display, nor allow, grant permission, nor charge a fee to an individual or entity for the opportunity to resell or display, certifiable agricultural products where the offering for sale or display occurs outside of but in ~~proximity to~~ within ??? feet of a certified farmers' market. In all cases, only certifiable agricultural products ~~must~~ may be sold within the area designated as the a certified farmers' market.

(e) During the months of May through October, an operator of a certified farmers' market shall not permit, allow, grant permission to, rent a stall to, or receive consideration of any kind from a vendor of a non-agricultural product in ~~proximity to~~ within ??? feet of a certified farmers' market where the number of non-agricultural product vendors exceeds 25% of the number of producers and certified producers of agricultural products selling in the certified farmers' market.”

Regarding the proposed amendment of Section 1392.2(m), definition of non-certifiable agricultural products, Janice expressed concerns regarding how this would be enforced. She suggested that the subcommittee further discuss this amendment and focus how it could be enforced.

MOTION: Jim Russell moved to refer CA Code of Regulations, Sections 1392.9(c) through 1392.9(e), and 1392.2(m) back to the Market Standards/Manager Certification Subcommittee for further discussion. Rusty Hall seconded. The motion passed unanimously.

D. NOTICE OF PROPOSED CA CODE OF REGULATIONS: SECTIONS 1392.2, DEFINITIONS AND 1392.4, CONDITIONS OF DIRECT MARKETING – JANICE PRICE

Section 1392.2 defines a “sprout” for purposes of practicing agricultural arts at a CFM. Section 1392.4 is to require farmers that are claiming organic to post their organic registration as well as their certification. It also would require market operators to have a valid certificate when in operation.

These proposals were published on or before June 4, 2004, and are currently out for public comment. The public comment period will end July 26, 2004. No

² The legal office suggested that the CFMAC determine the appropriate number of feet and add that number to the amendment.

hearing will be scheduled unless one is requested by an industry member. Janice has requested a letter of support from CFMAC, CACASA, and the Organic and CFM industries.

E. EXPIRING TERMS OF CFMAC MEMBERS – JANICE PRICE

In 2005, by statute, Lynn Bagley and Gail Hayden will end their fourth term as CFMAC members. Terms as an alternate member do count toward the four-term limit for appointments made to the Committee.

F. AGRICULTURAL COMMISSIONERS

Scott Hudson reported that the CACASA Subcommittee has met since the last CFMAC meeting. They are in the process of gathering information on how much the CFM program costs for the agricultural commissioners. CACASA also expressed the same concerns that CDFA has regarding "proximity" and enforcement issues related to proposed Section 1392.9(c) - 1392.9(e).

G. LONG RANGE PLANNING SUBCOMMITTEE – JANE ALLEN, CHAIR

Jane Allen reported that Louise Nelson Dyble of University California, Berkeley, has begun to compile the data from the surveys. It is anticipated that a preliminary report on the findings should be available for the September CFMAC meeting.

H. FINANCE SUBCOMMITTEE – SCOTT BEYLIK, CHAIR

Scott Beylik reported that the Finance Subcommittee met to discuss the possible proposal of a filing fee for requests to the Department for informal hearings on farmer vs. market grievances. It was suggested by this Subcommittee that a filing fee not be charged, as this process does not appear to be abused.

I. POLICY AND PROCEDURES SUBCOMMITTEE – HOWELL TUMLIN, CHAIR

This Subcommittee met on June 17, 2004, and June 21, 2004. The next meeting will be August 10, 2004. A full report will be given under items 5.d. and 5.e.

J. MARKET STANDARDS/MANAGER CERTIFICATION SUBCOMMITTEE -
HOWELL TUMLIN, CHAIR

This Subcommittee met on May 27, 2004. The next meeting will be July 22, 2004. A full report will be given under item 5.f.

K. ENFORCEMENT/MATRIX SUBCOMMITTEE – SCOTT HUDSON, CHAIR

No report at this time.

L. NON-CERTIFIABLE AGRICULTURAL PRODUCTS SUBCOMMITTEE – JIM RUSSELL, CHAIR

Jim Russell reported that the Non-Certifiable Agricultural Subcommittee met on June 28, 2004, and discussed the sale of non-certifiable agricultural products at CFMs. This topic will be discussed further in item 5.g.

He further reported the Subcommittee's findings on whether ocean fish are considered agricultural products. He explained that Janice Price had stated that they are not because:

1. The farmer has no control of the growing grounds, i.e. the ocean, and
2. The farmer does not perform the agricultural arts in the production of the fish from the ocean.

M. CHAIRMAN'S REPORT – JERRY GONCE

No report at this time.

N. DR. STEVEN BLANK – SPEAKER

Dr. Steven Blank from University California, Davis, spoke to the Committee regarding the evolution of the agricultural market. He stated that better storage and transportation has brought about a global surplus of most commodities. He explained that production costs are determined locally and prices are determined globally. This translates into prices decreasing and costs increasing.

Dr. Blank stressed the importance of value added products as a way of increasing revenue. Value added could be in the packaging, labeling, branding, as well as by processing.

ITEM 5: COMMITTEE BUSINESS

A. PARLIAMENTARY PROCEDURE FOR AMENDMENT TO CFMAC PROCEDURES FOR SUBCOMMITTEE ACTION: LACK OF VOTE FOR MAY 10, 2004 MEETING MINUTES – JANICE PRICE

This issue was resolved in Item 2 of this meeting by "the motion was not voted on at this point" being stricken from the motion on item 5.b. of the May 10, 2004 meeting minutes.

B. PROPOSED REGULATIONS FOR SECTIONS 1392.2 AND 1392.4: REQUEST FOR LETTER OF SUPPORT – JANICE PRICE

MOTION: Jim Russell moved to have the chairman write a letter of support to the Secretary for the proposed regulations of Sections 1392.2 and 1392.4. Harry Brown-Hiegel seconded. The motion passed unanimously.

C. PROPOSED REGULATION FOR SECTION 1392.8 FOR \$100 LATE PENALTY FEE AT 60 AND 90 DAYS – SCOTT BEYLIK

The Finance Subcommittee recommended to the CFMAC that Section 1392.8 be amended to include the following:

" (3) Any operator who fails to pay the required fee within 60 days after the end of the quarter in which it is due shall pay a late penalty fee of \$100 in addition to the late monthly interest penalty of one and one half (1 ½) percent on the unpaid balance referenced in Section 1392.8(2)

(4) Any operator who fails to pay the required fee within 90 days after the end of the quarter in which it is due shall pay an additional late penalty fee of \$100 in addition to the late monthly interest penalty of one and one half (1 ½) percent on the unpaid balance referenced in Section 1392.8(2)."

MOTION: Scott Beylik moved to approve the addition of Sections 1392.8(3) and 1392.8(4). Scott Hudson seconded.

Gail Hayden asked for a friendly amendment to add wording to Section 1392.8(3) and drop Section 1392.8(4). She requested that Section 1392.8(3) now read:

" (3) Any operator who fails to pay the required fee within 60 days after the end of the quarter in which it is due shall pay a late penalty fee of \$100 in addition to the late monthly interest penalty of one and one half (1 ½) percent on the unpaid balance referenced in Section 1392.8(2) and a late penalty fee of \$100 in addition to the late monthly interest payment of one and one half (1 ½) percent on the unpaid balance referenced in Section 1392.8(2) every 30 days thereafter until the certificate expires or until payment is received."

Scott Beylik accepted the friendly amendment.

MOTION: Gail Hayden moved to approve the addition of Section 1392.8(3) as submitted and amended. Mary Lou Weiss seconded. The motion passed unanimously.

D. POLICY AND PROCEDURES SUBCOMMITTEE MISSION STATEMENT – HOWELL TUMLIN

Howell Tumlin presented the following Policies and Procedures Subcommittee mission statement to the CFMAC:

“ It is the intent of the Policies and Procedures Subcommittee to identify, study and make recommendations to the CFMAC regarding the issues related to its internal operations and activities.”

MOTION: Howell Tumlin moved to accept the Policies and Procedures mission statement. Jim Russell seconded. The motion passed unanimously.

E. CFMAC PROCEDURE AMENDMENT PROPOSAL – HOWELL TUMLIN

On behalf of the Policies and Procedures Subcommittee, Howell Tumlin presented the following amendments to the CFMAC Procedures:

1. *PROPOSED AMENDMENT TO SECTION 1.6, ELECTION OF OFFICERS*

“Committee officers shall be elected for a term of one year commencing with the first meeting of the Committee of each calendar year. Any Committee member may hold more than one office, except that the Chairperson shall hold only that office. In the event of a vacancy, the Committee will elect a new officer to fill the remainder of the unexpired term.”

Gail Hayden asked to amend the language “new officer” to “voting member of the committee”. Howell accepted.

MOTION: Howell Tumlin moved to accept 1.6 as submitted by the Policies and Procedures subcommittee and amended by Gail Hayden. Edith Clark seconded. The motion passed unanimously.

2. *PROPOSED ADOPTION OF SECTION 1.7.1, SUBCOMMITTEE QUORUM*

"A quorum for the conduct of subcommittee business shall be a majority of the subcommittee members. A majority of the quorum shall be entitled to adopt resolutions constituting subcommittee action. Once a quorum has been established and a meeting has commenced, a subcommittee may continue to meet even if, as the result of early retirement of some members, less than a majority of the subcommittee members are in attendance. Under such circumstances, a vote of a majority of the quorum is still required to approve any action by the subcommittee other than a motion to adjourn."

Only the persons physically present at the location designated for the meeting, or the persons participating in the teleconference call meeting, may be counted for the purposes of establishing a quorum or determining the outcome of a vote."

MOTION: Howell Tumlin moved to accept 1.7.1 as submitted. Dennis Peitso seconded. The motion passed with Lynn Bagley, Mary Lou Weiss, and Greta Dunlap opposing the adoption of Section 1.7.1.

F. MARKET STANDARDS/MANAGER CERTIFICATION SUBCOMMITTEE PROPOSALS – HOWELL TUMLIN

On behalf of the Market Standards and Manager Certification Subcommittee, Howell Tumlin presented the following amendments:

1. *PROPOSED REGULATION TO AMEND SECTION 1392.9, COMPLIANCE MARKET OPERATOR REQUIREMENTS TO RESTRICT NON-AGRICULTURAL VENDORS*

"...During the months of May through October, an operator of a certified farmers' market shall not permit, allow, grant permission to, rent a stall to, or receive consideration of any kind from a vendor of a non-agricultural product in proximity to a certified farmers' market where the number of non-agricultural product vendors exceeds 25% of the number of producers and certified producers of agricultural products selling in the certified farmers' market."

MOTION: Howell moved to approve as submitted. Scott Beylik seconded. A discussion ensued.

Greta Dunlap requested that this amendment be put on hold until the survey results are calculated. Louise Nelson Dyble gave a preliminary survey result that 32-36% of vendors at CFMs are non-certifiable agricultural or non-agricultural vendors.

MOTION: Jim Russell moved to send this amendment back to the subcommittee for further review. Mary Lou Weiss seconded. The motion passed with one vote in opposition.

2. *PROPOSED REGULATION TO AMEND SECTION 1392.6, CERTIFICATION REQUIREMENTS OF A CFM TO CLARIFY DUE PROCESS*

“...(f) The certified farmers’ market’s rules and regulations shall contain:

- (a) a clause, which states that the governing body and its designated agents shall implement and enforce all rules and regulations pertaining to the operation of a certified farmers’ market in a fair and equitable manner
- (b) a provision that sets forth the due process and appeal rights set forth in these regulations that a market participant shall receive prior to the imposition of a fine, suspension or expulsion from a certified farmers’ market.”

The motion for approval was included in the motion for item 5.F.3.

3. *AMEND SECTION 1392.9, COMPLIANCE MARKET OPERATOR REQUIREMENTS OF A CFM TO CLARIFY DUE PROCESS*

“...The operator of a certified farmers’ market shall provide reasonable due process to certified farmers’ market participant prior to an imposition of a fine, suspension or expulsion from a certified farmers’ market. A market participant shall receive a written Notice of Intent to Take an Action if the action includes a fine, suspension or expulsion from the market. The Notice shall state the specific reasons for the proposed action. The Notice shall be delivered in person or mailed to the market participant prior to an imposition of a fine, suspension or expulsion from the market unless an immediate suspension is

necessary to protect the public health, safety or welfare. The Notice shall advise the participant that he or she has fifteen calendar days to submit a written appeal of the proposed action. If an appeal is submitted in a timely manner, the governing board or its designee shall arrange a date and time for the appellant to appear before the governing board or its designee for an administrative hearing. The administrative hearing shall provide the participant with an opportunity to present evidence and argument regarding the reasons stated in the proposed action and the appropriateness of the proposed action. The administrative hearing shall result in a written decision upholding, reversing or modifying the proposed action. The decision shall be issued within fifteen calendar days of the conclusion of the hearing."

MOTION: Howell Tumlin moved to approve the amendment of Sections 1392.6 and 1392.9 as submitted. Scott Hudson seconded. The motion passed unanimously.

G. PROPOSED REGULATION GOVERNING THE SALE OF NON-CERTIFIABLE AGRICULTURAL PRODUCTS – JIM RUSSELL

Jim Russell presented the amendment of Section 1392. It reads:

"It is the intent of this article to encourage a productive and profitable agriculture in California, as directed by state agricultural policy (California Food and Agriculture Code, Division 1, Chapter 6, Article 2, Section 821), by ~~The intent of this article is to facilitate~~ facilitating the sale of agricultural products from producers and certified producers within the state directly to consumers while maintaining sufficient regulatory control to ensure that the agricultural products are of acceptable quality and that the selling activities are conducted honestly and fairly.

MOTION: Jim Russell moved to accept the amendment as submitted. Scott Hudson seconded. The motion passed unanimously.

H. APPOINT CFMAC CHAIR – JERRY GONCE

Jim Russell nominated Harry Brown-Hiegel as committee chair; Harry accepted the nomination. Mary Lou Weiss nominated Jim Russell as committee chair, Jim declined. Howell Tumlin nominated Gail Hayden as committee chair; Gail accepted the nomination.

MOTION: Howell Tumlin moved to close the nominations. Jim Russell seconded.

MOTION: Howell Tumlin moved to have a paper ballot. Harry Brown-Hiegel seconded.

The vote was taken by paper ballot. Harry Brown-Hiegel was voted in as the CFMAC Chair.

Rusty Hall nominated Gail Hayden as committee vice-chair.

MOTION: Mary Lou Weiss moved to close the nominations. Edith Clark seconded.

Gail Hayden was voted in as the CFMAC Vice-Chair.

ITEM 6: NEW BUSINESS (DISCUSSION ONLY)

A. LETTER FROM JACK AND JANE GIBSON

Jack Gibson from the Cambria Farmers' Market expressed concerns that he had stated in his letter to the CFMAC. He specifically spoke about his concerns that Southland's proposals would bring over-regulation into the industry, resulting in enforcement issues and increased fees.

ITEM 7: MEMBER ROUNDTALBE DISCUSSION – JERRY GONCE

Gail Hayden suggested that the CFMAC chair and all the subcommittee chairs meet to discuss and identify the problems that the committee is currently attempting to address.

Harry Brown-Hiegel suggested that a Department of Health representative be added to the committee.

ITEM 8: NEXT MEETING SEPTEMBER 13, 2004 – TORRANCE/NEW AGENDA ITEMS – JERRY GONCE

The following items will be added to the September 13, 2004 agenda:

- Brian Roach will speak
- Report on CFMAC and subcommittee chairs' meeting
- Discussion of a Department of Health representative

ITEM 9: ADJOURNMENT

MOTION: Howell Tumlin moved to adjourn the meeting. Mary Lou Weiss seconded. The motion passed unanimously.

Respectfully submitted by:

Janice Price, Supervisor
Certified Farmers' Market Program
Inspection and Compliance
Inspection Services